**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION.**

**FIRST APPEAL ST.NO.15608 OF 2005.**

**WITH**

**CIVIL APPLICATION NO.3184 OF 2005.**

Arvind Mukund Mhatre : Appellant.

versus

The State of Maharashtra & ors. : Respondents.

Mr.P.K.Dhakephalkar with Ms.Geeta Shastri i/by Khilnani & Co. for the petitioner.

Mr.V.B.Sakhare AGP for Respondent Nos. 1,7,8 and 9.

Mr.J.J.Xavier for the Respondents/BMC.

Mr.S.V.Chavan i/by Utangale & Co. for Respondent No.5.

**CORAM : D.G.DESHPANDE,J.**

**DATED : 27th September 2005.**

**ORAL ORDER**

1. Heard the advocates for the parties. The

appeal is still on stamp paper. It is on board for admission. Looking to the impugned order, it has to be heard finally. Learned counsel Mr.Dhakephalkar gave an undertaking that he will remove the office objections, excepting filing the copy of the decree, which is no necessary in the circumstances, within one week from today without fail and get the appeal numbered.

2. Appellant is the original plaintiff. He filed a suit before the City Civil Court and took out a notice of motion and also took out a chamber summons. While deciding the motion and chamber summons, the court, after hearing the advocates and recording the statement of the BMC that the rooms in questions are already allotted to the members in the family of the plaintiff, dismissed the suit, holding that nothing survives in this suit. That order is totally wrong. The court should have decided the motion and chamber summons independently. The suit cannot be dismissed like that. Admittedly, there was no motion of the other side about any preliminary objection regarding maintainability of the suit. Therefore, this impugned order dismissing the suit and, the chamber summons and the notice of

motion is set aside. Suit is restored to file along with the notice of motion and chamber summons. The court will hear the parties again on the notice of motion and the chamber summons and decide them according to law. Parties to appear before the City Civil Court on 10th October 2005. Appeal is allowed in the above terms with no order as to costs and disposed of along with the civil application.

**[D.G.DESHPANDE,J]**